FD-515 (Rev. 6-6-85)
ACCOMPLISHMENT REPORT
(Effective 10/1/85)
(Submit within 30 days from date of accomplishment)

TO: DIRECTOR, FBI

183-6252	Bureau File Number
183A-80	Field Office File Number
24	Squad or RA Number
	Agent's Social Security No.

b6
b7C

Date 2/24/86

FROM: SAC, MILWAUKEE (P)
SUBJECT:
FRANK PETER BALISTRIERI; ET AL; UNSUB(S); AUGUST MANIACI, aka - VICTIM; RICO-MURDER; ATTEMPTED MURDER; OOJ; OO: MILWAUKEE

☐ X if a joint operation with: _____ (identity of other agency)

☐ X if case involves corruption of a public official (Federal, State or Local).

Investigative Assistance or Technique Used

Were any of the investigative assistance or techniques listed below used in connection with accomplishment being claimed? ☐ No ☒ Yes - If Yes, rate each used as follows:
1 = Used, but did not help 2 = Helped, but only minimally 3 = Helped, substantially 4 = Absolutely essential

	Rating		Rating		Rating		Rating
1. Acctg Tech Assistance		8. Eng. Sect. Tape Exams		15. Photographic Coverage		22. Telephone Toll Recs	
2. Aircraft Assistance		9. Hypnosis Assistance		16. Polygraph Assistance		23. UCO Group I	
3. Computer Assistance		10. Ident Div Assistance		17. Search Warrants Executed		24. UCO Group II	
4. Consensus Monitoring		11. Informant Information		18. Show Money Usage		25. UC Other	
5. ELSUR - FISC		12. Lab Div Exams		19. Surveil. Sqd. (SOG) Asst		26. NCAVC/ VI-CAP	
6. ELSUR - Title III		13. Lab Div Field Support		20. SWAT Team Action		27. Visual Invest - Analysis (VIA)	
7. Eng. Sect. Field Support		14. Pen Registers		21. Tech. Agt. or Tech Equip			

b7E

A. Preliminary Judicial Process (Number of subjects)	Complaints	Informations	Indictments

B. Arrests, Locates, Summonses or Subpoenas Served (No. of Subj.)

	Subject Priority* A	B	C
FBI Arrests -			
FBI Locates -			
Local Arrests -			

FBI Subj. Resisted _____ ; Armed _____

Subpoenas Served _____
Criminal Summons _____
Local Crim. Summons _____

C. Release of Hostages or Children Located: (Number of Hostages or Children Located)

Hostages Held By Terrorists _____; All Other Hostage Situations _____

Missing or Kidnaped Children Located _____

D. Recoveries, Restitutions, or Potential Economic Loss Prevented (PELP) (Explain valuation in remarks)

Property Type Code*	Recoveries	Restitutions	PELP Type Code*	Potential Economic Loss Prevented
	$	$		$
	$	$		$
	$	$		$
	$	$		$
	$	$		$

E. Civil Matters

	Government Defendant	Government Plaintiff
Amount of Suit	$	$
Settlement or Award	$	$ Enter AFA Payment Here

F. Final Judicial Process: Judicial District (7) ED WI (District / State) — 8/6/85 (Conviction or Pretrial Div. Date) — 2/11/86 (Sentence Date) — No. of Subjects _____ (Acquitted) _____ (Dismissed)

(X)

Subject 1 Subject Description Code* — JOHN MONTELEONE 1B

	Conviction Title	Section	Counts	Combined Sentence In-Jail Yrs	Mos	Suspended Yrs	Mos	Probation Yrs	Mos
☒ Felony									
☐ Misdemeanor	18	401	1	4					
☐ Plea				Total Fines $					
☒ Trial				Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-8 yrs. susp. = 2 yrs. In-Jail.					
☐ Pretrial Diversion									

Subject 2 Subject Description Code* —

	Conviction Title	Section	Counts	Combined Sentence In-Jail Yrs	Mos	Suspended Yrs	Mos	Probation Yrs	Mos
☐ Felony									
☐ Misdemeanor									
☐ Plea				Total Fines $					
☐ Trial				Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-8 yrs. susp. = 2 yrs. In-Jail.					
☐ Pretrial Diversion									

Subject 3 Subject Description Code* —

	Conviction Title	Section	Counts	Combined Sentence In-Jail Yrs	Mos	Suspended Yrs	Mos	Probation Yrs	Mos
☐ Felony									
☐ Misdemeanor									
☐ Plea				Total Fines $					
☐ Trial				Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-8 yrs. susp. = 2 yrs. In-Jail.					
☐ Pretrial Diversion									

Subject 4 Subject Description Code* —

	Conviction Title	Section	Counts	Combined Sentence In-Jail Yrs	Mos	Suspended Yrs	Mos	Probation Yrs	Mos
☐ Felony									
☐ Misdemeanor									
☐ Plea				Total Fines $					
☐ Trial				Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-8 yrs. susp. = 2 yrs. In-Jail.					
☐ Pretrial Diversion									

Attach additional forms if reporting final judicial process on more than four subjects, and submit a final disposition for (R-84) for each subject.

Remarks: (For every subject reported in Sections A, B or F above, provide name, DOB, race*, sex, and POB and SSAN if available.) On 8/6/85, MONTELEONE was found guilty on one count, T18, Sec. 401, Obstruction of Justice, Criminal Contempt before the Honorable [redacted] EDW. On 2/11/86, MONTELEONE was sentenced to four years custody of the Attorney General and to report 3/3/86. MONTELEONE is a lieutenant in the "West Side Crew" Chicago LCN Family. MONTELEONE is a white male, DOB 1/29/24, and has SSAN 356-05-9868.

OCIS [Y] [N]
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NE

[redacted]

(X)

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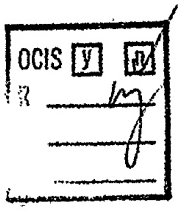
2 - Bureau
2 - Field Office (1-183A-80) (1-66-682 Sub A)
* See codes on reverse side.
PAS:bac
(4)

183-80-390



183A-80-392

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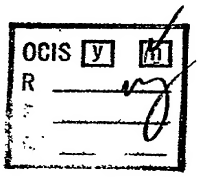
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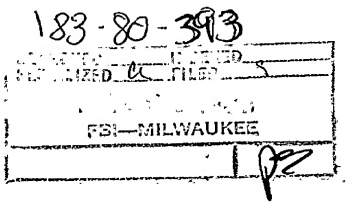
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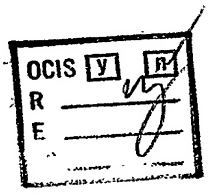
FBI—MILWAUKEE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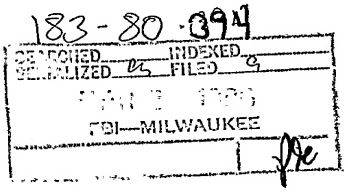
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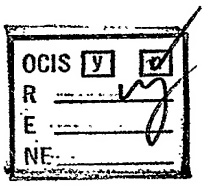
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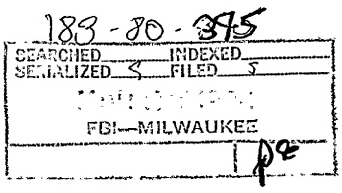
183-80-375
SEARCHED
INDEXED
SERIALIZED
FILED
FBI—MILWAUKEE

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Post Office Box 2058
Milwaukee, Wisconsin 53201
March 27, 1986

Honorable Joseph P. Stadtmueller
United States Attorney
Eastern District of Wisconsin
Milwaukee, Wisconsin

Attention: [redacted]

Re: Frank P. Balistrieri;
Peter F. Balistrieri;
Steve J. Di Salvo;
August S. Maniaci - Victim;
Vincent J. Maniaci - Victim;
Racketeer Influenced and
Corrupt Organizations;
Murder;
Attempted Murder;
Criminal Contempt

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Dear Mr. Stadtmueller:

Attached to this letter are three original Grand Jury subpoenas for [redacted]

These return subpoenas were obtained from your office from [redacted] which were needed in the prosecution of John Monteleone for criminal contempt at Milwaukee this past summer. Monteleone has been sentenced and is presently serving his time at Sandstone Federal Correctional Institution.

Your office's cooperation in locating these subpoenas from the 1979 Special Grand Jury is greatly appreciated.

Very truly yours,

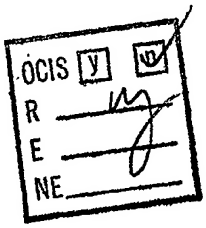
H. ERNEST WOODBY
Special Agent in Charge

By: [redacted]
Supervisory Special Agent

2 - Addressee
2 - Milwaukee (183A-80)
PAS/ls
(4)

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____

183-80 396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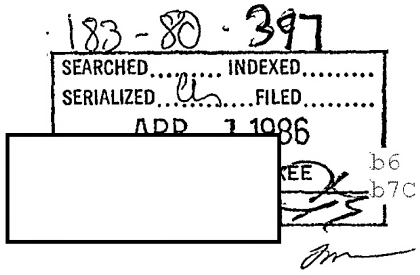
183-80-397
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SERIALIZED..... FILED.....
APR 1 1986
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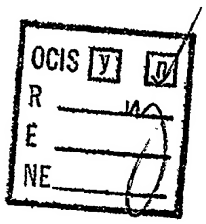
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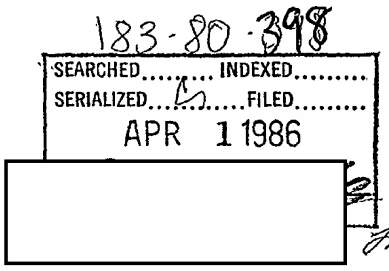
183-80-398
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SERIALIZED...S.....FILED.....
APR 1 1986

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United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

March 18, 1986

Before

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. JOEL M. FLAUM, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

b6
b7C

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 86-1307 vs.

JOHN MONTELEONE,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 85-CR-40
Thomas J. Curran, Judge.

This matter comes before the court for its consideration upon the following documents:

1. "MOTION FOR RELEASE PENDING APPEAL" filed herein on March 3, 1986, by counsel for the defendant-appellant.

2. "GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL" filed herein on March 12, 1986, by counsel.

3. "MOTION FOR LEAVE TO FILE REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL" filed herein on March 17, 1986, by counsel for the defendant-appellant.

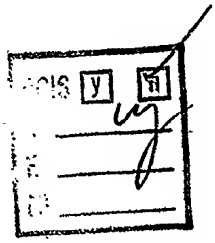
4. "REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL" filed herein on March 18, 1986, by counsel for the defendant-appellant.

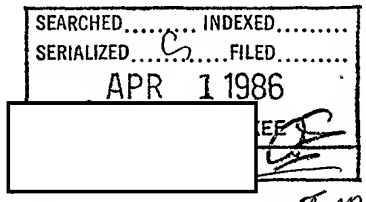
On consideration thereof,

IT IS ORDERED that the "MOTION FOR LEAVE TO FILE REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL" is GRANTED and the clerk of this court is directed to file the "REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL".

continued.

We conclude that this appeal raises a "substantial question" under 18 U.S.C. § 3143(b). United States v. Bilanzich, 771 F.2d 292 (7th Cir. 1985). Appellant's motion for bond pending appeal is therefore GRANTED. The parties are directed to return to the district court forthwith for the setting and execution of bond.





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~~183A-80-A~~ 183A-80-400

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff, Case No. 85-CR-40

v.

JOHN MONTELEONE,

Defendant.

ORDER

The court has this day received a directive from the United States Court of Appeals for the Seventh Circuit finding that the pending appeal raises a substantial question under 18 U.S.C. § 3143(b) and directing the parties "to return to the district court forthwith for the setting and execution of bond." The attached Writ has been forwarded to the United States Marshal ordering the return of the defendant as soon as practicable, but, under no circumstances, later than April 2, 1986. A bond hearing will be conducted within forty-eight hours of receipt of notice of the defendant's arrival at the nearest available facility. Counsel will be notified by the court as to the date and time of said hearing.

IT IS ORDERED that the United States Probation Department prepare a pre-release report updating the pre-sentence report of December 12, 1985. The Probation Officer is to note any facts or circumstances which would aid in determining whether

the defendant is likely to flee or whether he poses a threat to the well being of any person or of the community. The Probation Officer is also to determine whether there has been any change in circumstance in the defendant's family life or financial situation.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin this 20th day of March, 1986.

Thomas J. Curran
United States District Judge

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b7C

MAR 24 1986

U.S. DIST. COURT EAST. DIST. WISC.
FILED
at ___ m
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

MAR 20 1986

UNITED STATES OF AMERICA,

Plaintiff, Case No. 85-CR-40

v.

JOHN MONTELEONE,

Defendant.

WRIT OF HABEAS CORPUS AD PROSEQUENDAM

TO: THE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF WISCONSIN AND WARDEN, FEDERAL CORRECTIONAL INSTITUTION, SANDSTONE, MINNESOTA

G R E E T I N G S:

WE COMMAND YOU, that you have the body of

JOHN MONTELEONE,

now detained in the Federal Correctional Institution, Sandstone, Minnesota, now in your custody, and that you produce him, under safe and secure conduct to Room 242, Federal Building, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin, as expeditiously as possible, no later than April 2, 1986, for the purpose of attending a hearing to set bond.

WE FURTHER COMMAND that you promptly notify the court as to when the prisoner will arrive at the closest federal facility.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin this 20th day of March, 1986.

Thomas J. Curran
United States District Judge

AO 72A
(Rev. 8/82)

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DE CG.

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FM CHICAGO (183A-1775) (P) (SQ. 6C)

TO MILWAUKEE ROUTINE

BT

UNCLAS E F T O

FRANK BALISTRIERI; ET AL; UNSUB; AUGUST MANIACI, AKA VICTIM; VINCENT MANIACI, AKA VICTIM; RICO-MURDER-ØØJ; OO:MILWAUKEE.

SUN-UP; RICO; OO:CHICAGO.

RE TELETYPE TO CHICAGO FROM MILWAUKEE DATED FEBRUARY 5, 1986.

GOVERNMENT WITNESS, [redacted] JOHN MONTELIONE IN MILWAUKEE, WISCONSIN, ON OR ABOUT [redacted] CHICAGO DIVISION REQUESTS A COPY OF THE TRANSCRIPT REFLECTING [redacted] TESTIMONY DURING THIS HEARING.

MILWAUKEE AT MILWAUKEE, WISCONSIN. OBTAIN

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b7D

183-80-401
183-293
SEARCHED INDEXED
SERIALIZED FILED

TRANSCRIPT OF [redacted] AND FORWARD TO CHICAGO

b3
b6
b7C
b7D

UNDER CASE FILE SUN-UP; RICO; OO:CHICAGO, FILE NUMBER

183A-1775.

BT

FD-36 (Rev. 8-26-82)

FBI

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☒ Airtel

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date 5/21/86

TO: SAC, CHICAGO (183A-1808)

FROM: SAC, MILWAUKEE (183A-80) (P)

FRANK BALISTRIERI;
ET AL;
UNSUB;
AUGUST MANIACI, aka -
VICTIM;
VINCENT MANIACI, aka -
VICTIM
RICO-MURDER; OOJ
OO: MILWAUKEE
MI 183A-80

JOHN MONTELEONE
RICO
OO: CHICAGO
CG 183A-1808

Re Milwaukee telcall to Chicago, 5/20/86.

Enclosed for Chicago is an order signed by the Honorable THOMAS J. CURRAN, United States District Judge for the Eastern District of Wisconsin, on 3/20/86. This order followed a directive by the U.S. Court of Appeals for the 7th Circuit at Chicago wherein they advised that MONTELEONE's appeal raised "a substantial question" and ordered him out on bond pending appeal.

MONTELEONE was released the same day, 3/20/86. This release followed his conviction at Milwaukee on 2/11/86 when he was sentenced to four years custody of the Attorney General.

2 - Chicago (183A-1808) (Enc. 1)
(2) - Milwaukee (183A-80)
PAS:cal
(4)

Approved: _____ Transmitted _____ Per _____
(Number) (T

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183A 80-403 Jmo

A probation report was ordered at the time of MONTELEONE's release.

LEADS

MILWAUKEE DIVISION

AT MILWAUKEE, WISCONSIN

Will determine the conditions of MONTELEONE's release and advise Chicago.

FD-36 (Rev. 8-26-82)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ Airtel

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 5/21/86

TO: SAC, CHICAGO (183A-1775)

FROM: SAC, MILWAUKEE (183A-80) (P)

FRANK BALISTRIERI;
ET AL;
UNSUB;
AUGUST MANIACI, aka -
VICTIM;
VINCENT MANIACI, aka -
VICTIM
RICO-MURDER; OOJ
OO: MILWAUKEE
MI 183A-80

SUN-UP;
RICO
OO: CHICAGO
CG 183A-1775

Re Chicago teletype to Milwaukee, 4/13/86.

Enclosed for Chicago are two copies of an transcript of testimony [redacted] in U.S. vs. John Monteleone, heard on [redacted] by the Honorable THOMAS J. CURRAN, presiding Judge, Eastern District of Wisconsin.

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This transcript is being furnished per Chicago's request for the same.

2 - Chicago (183A-1775) (Enc. 2)
(2) - Milwaukee (183A-80)
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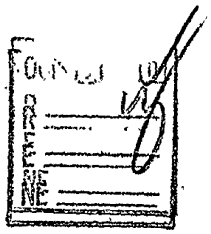
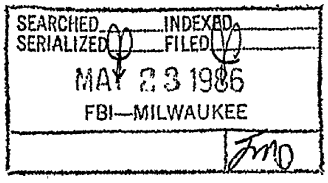
Approved: _____ Transmitted _____ (Number) _____ (Time) Per _____

183A-EG-4104

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MAY 23 1986
FBI—MILWAUKEE

183A-80-405

(31)

THE NEW YORK TIMES, SATURDAY, APRIL 19, 1986

Actors Reading From Transcript For 'Pizza' Trial

Give Voice to Recorded Drug-Case Dialogues

NYT 4-19-86

By ARNOLD H. LUBASCH

A team of professional actors played an unusual courtroom role yesterday by reading transcripts as evidence in the "pizza connection" trial.

The prosecution, presenting recorded telephone conversations involving defendants in the major narcotics trial, used four actors to read the transcripts to the jury in Federal District Court in Manhattan.

Sitting on the witness stand in the large wood-paneled courtroom, the actors read transcripts of a pizzeria owner and members of his family talking about money, in what the prosecution portrayed as money-laundering discussions.

The actors are Joan Nimmo, Debbie Merrill, Robert Petito and Cal Saint John, all Manhattan residents. They have previously appeared in Off Off Broadway productions, but perhaps not quite so far off Broadway.

Without auditions, they were selected for the courtroom scene after "a friend of a friend" said a lawyer needed some readers for a trial.

'Very Exciting'

"We just do our thing in court," according to Miss Nimmo, who said she was also in rehearsals for an Off Off Broadway play titled "Immortal Beloved." She noted that the courtroom actors were not familiar with the criminal case because they were "only in court while reading."

Mr. Petito, artistic director of an Off Off Broadway group called the American Ensemble Company, found it "very exciting" to appear in court instead of on stage. He said, "It's almost the best of both — because it's real life."

"It's very important that we get every word right," Mr. Saint John observed, adding that the actors carefully read the transcripts before coming to court, although they do not rehearse with each other.

Miss Merrill, who said she recently played Christopher Reeve's roller-skating friend in "Marriage of Figaro" at the Circle in the Square Theater, remarked that actors had never been used before in a trial — "so this is history."

Lawyers in the case said they knew of no other criminal trial that had ever hired professional actors to present evidence. Each actor is being paid less than $20 an hour for the courtroom readings, which got under way in the last two weeks.

The original conversations of the defendants were in a Sicilian dialect, making it necessary to present the English transcripts to the jury. Normally, prosecutors or court employees would read the transcripts, but there were so many recorded conversations in this case that the task was considered burdensome and boring.

When the plan to use the actors was disclosed two weeks ago at a hearing outside of the jury's presence, defense lawyers objected to the procedure, contending that actors would put unfair emphasis into the conversations.

Ruling that the prosecution could use the actors, Judge Pierre N. Leval said, "I don't know of any rule that requires that the persons who read the transcripts be the lawyers in the case."

The jury has been told that the four readers are actors simply reading transcripts, not performing, in the trial of the 22 defendants charged with participating in a Mafia drug ring. The readings are scheduled to continue next week.

FD-350 (Rev. 5-8-81)

(Mount Clipping in Space Below)

FBI probes Montos disappearance case

Federal authorities said Wednesday they were investigating the disappearance of Nicholas G. Montos, a Chicago man whom federal authorities have alleged was involved in a bungled gangland car bombing attempt in Milwaukee during the late 1970s.

Montos, 69, of River Forest in west suburban Chicago, failed to appear in court last week in Crown Point, Ind., for arraignment on charges of being a habitual criminal.

His wife, Nancy, told the FBI Oct. 7 that he had been missing since Oct. 5, when he said he was going to meet someone for dinner. She also told River Forest police that his passport was missing, said Keith Killacky, a spokesman for the Chicago FBI.

"We have an active investigation to locate him and return him to the criminal justice system," Killacky said. "We don't know if it was a voluntary departure or if it's another burial in Indiana."

Killacky was referring to a recent Chicago gangland slaying in which reputed mobster Anthony Spilotro, who was facing federal charges, and his brother, Michael, disappeared shortly before Anthony's trial. They were found beaten to death in a shallow grave near the Indiana-Illinois state line.

Montos, a renowned escape artist and safecracker who was the first person to make the FBI's Most Wanted list twice, has a police record dating back to the 1930s. He was awaiting trial in Indiana for a November 1985 break-in at a Hammond, Ind., jewelry store.

A court brief filed in Federal Court in 1980 disclosed that the FBI believed Montos was involved in the Milwaukee car bombing attempt in the late 1970s.

The brief did not say who the target of the bombing attempt was. However, 20 sticks of dynamite were found Aug. 17, 1977, under the hood of a car owned by Vincent J. Maniaci. The dynamite failed to explode.

The habitual criminal charge could earn Montos an extra 30 years in prison in addition to any sentence for the robbery charge. Another defendant, Anthony DePaolo, 56, of Chicago, also failed to make an appearance at the arraignment, Killacky said.

If the two men fail to show up for another court appearance Thursday, arrest warrants will be sought.

(Indicate page, name of newspaper, city and state.) PG#5,PT.1
MILWAUKEE SENTINEL
MILWAUKEE, WISCONSIN

Date: 10/16/86
Edition: FINAL

Title: Nicolas G. Montos

Character: RICO
or
Classification: 183-
Submitting Office: MILWAUKEE

Indexing:

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FBI/DOJ

FBI

NOV 5 1986

In the

United States Court of Appeals

For the Seventh Circuit

No. 86-1307

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN MONTELEONE,

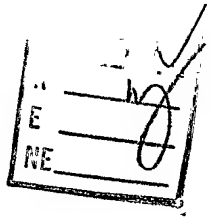
Defendant-Appellant.

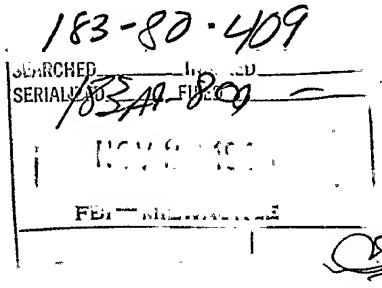
Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 85 CR 40—**Thomas J. Curran**, *Judge.*

ARGUED JUNE 10, 1986—DECIDED NOVEMBER 3, 1986

Before WOOD, JR., CUDAHY, and FLAUM, *Circuit Judges.*

FLAUM, *Circuit Judge.* In August and again in November of 1983 John Monteleone refused to answer questions put to him before a federal grand jury in Milwaukee, Wisconsin. Since his second refusal followed a judicial grant of immunity, he was held in civil contempt and lived out the life of the grand jury in jail. He was later convicted of criminal contempt based on the same refusal to testify, and now appeals that conviction. His principal argument in this court is that he should have been warned during the immunity and civil contempt proceedings that he could face additional prison time under a criminal conviction based





on the same conduct. We find that no such warning is required, and for the reasons set forth below we affirm his conviction.

I.

In August of 1977 a bomb was discovered in an automobile in Milwaukee. On November 13, 1979 John Monteleone appeared before a federal grand jury investigating the attempted bombing and refused to answer questions, asserting his Fifth Amendment privilege against self-incrimination. The government did not pursue his testimony further at that time.

Monteleone was again called before a federal grand jury in 1983. This grand jury was investigating possible obstruction of justice charges in connection with Monteleone's 1979 refusal to testify on the attempted bombing. When Monteleone first appeared on August 2, 1983 he refused to testify, again asserting his Fifth Amendment privilege. The government filed a petition under 18 U.S.C. § 6002 requesting that he be immunized from prosecution. At a hearing on October 5, District Judge Terence T. Evans granted the petition and ordered Monteleone to testify, advising him in open court that further refusal could result in his being "held in contempt." He also stated that the government could ask him to "find [Monteleone] in contempt and punish him accordingly." No explicit reference to civil or criminal contempt was made.

Monteleone next appeared before the grand jury on November 1, 1983. He read a brief statement indicating that he had refused to testify in 1979 solely on the advice of his attorney, but refused to answer any questions despite acknowledging that he had been immunized by Judge Evans. The government immediately asked that Monteleone be held in civil contempt and incarcerated under 28 U.S.C § 1826. At a hearing that same day Judge Evans ruled that Monteleone's prepared statement did not comply with his obligation to testify, held him in contempt

and sent him to jail, informing him that he could "purge himself of contempt at such time as he convinces me that he is willing to appear before the grand jury and answer questions as asked."

On January 17, 1984 the government brought Monteleone once more to the grand jury room. The prosecutor reminded him that he had already been held in civil contempt and noted that his refusal to testify "[could] also be considered a crime as well as a civil matter." Monteleone again declined to answer any questions. Three days later the grand jury's term expired and Monteleone was released. He had served two months and three weeks on his civil contempt citation.

On March 28, 1985 the government applied under Rule 42(b), Fed.R.Crim.P., for issuance of a notice of prosecution for criminal contempt against Monteleone based on his refusals to testify in November of 1983 and January of 1984. Notice was entered in the district court by Judge Thomas J. Curran. The case was tried to a jury on a record consisting largely of transcripts of Monteleone's appearances before the grand jury and before Judge Evans. The jury found Monteleone guilty, and Judge Curran sentenced him to a term of four years' imprisonment.

II.

A.

Presenting a question of first impression in this Circuit, Monteleone asserts that his due process rights were violated by Judge Evans' failure to advise him during the civil contempt proceedings that his recalcitrance could also result in separate and additional criminal penalties. He argues that a witness is unlikely to make the distinction between the coercive nature of civil contempt and the "penalty" of criminal contempt, and that without a specific warning a witness in his position is led to believe

that the civil sanction is the full penalty for his refusal to testify.[1]

In his briefs in this court Monteleone refers to Judge Evans' failure to warn him "at the time the court imposed the coercive sanction of civil committment for the life of the grand jury . . ." The government correctly points out that at the time Monteleone was actually held in civil contempt (November 1, 1983) he had already committed the criminal act of refusing to testify despite immunity; a "warning" delivered at that point would be ineffective because it was then beyond Monteleone's power to erase his criminal conduct by agreeing to testify. *See United States v. Petito*, 671 F.2d 68 (2d Cir.), *cert. denied*, 459 U.S. 824 (1982)[2]. At oral argument, Monteleone's counsel suggested that the warning be required at the time immunity is granted, at which point a witness can still heed it and avoid a criminal violation.[3]

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[1] Monteleone contends that he was led to believe that the civil sanction was the only one that would be visited upon him, but has not actually claimed that he would have changed his mind about testifying if he had been told further sanctions could follow.

[2] In our view there is no requirement that preindictment notice need be given an individual, held in civil contempt for his refusal to testify following a grant of immunity, that he could also be subject to a charge for criminal contempt. Appellant had committed the act subjecting him to criminal contempt at the moment he refused to answer questions after being granted immunity. Any remarks later made by [the district judge], when Petito appeared before him for the second time, were after the fact of the contemptuous act. Appellant had already chosen to disregard the law and risk the consequences. To suggest that he is entitled to notice of those consequences or of the crime he had already committed as a prerequisite to being prosecuted is tantamount to adopting the doctrine . . . that ignorance of the law is an excuse.

671 F.2d at 73 (citations omitted).

[3] We would not ordinarily consider an *issue* raised for the first time at oral argument. *See, e.g., Goldblatt Brothers v. Home Indemnity Co.*, 773 F.2d 121, 126 (7th Cir. 1985). In this case, though,

(Footnote continued on following page)

In support of his argument Monteleone cites two cases from the Ninth Circuit: *Daschbach v. United States*, 254 F.2d 687 (9th Cir. 1958), and *Yates v. United States*, 227 F.2d 848 (9th Cir. 1955). In *Yates*, a criminal defendant's refusal to answer four questions on the witness stand at her own trial was met with immediate incarceration "until she should purge herself of the contempt by answering these four questions." 227 F.2d at 849. After her trial ended she was criminally committed for contempt based on the same refusal. The *Yates* court reversed her criminal conviction, holding that she was entitled "at an appropriate time"[4] to be advised that the initial, coercive restraint of civil contempt would not relieve her of liability for criminal contempt. *Id.* at 850-851.

Like *Yates*, *Daschbach* concerned witnesses at criminal trials who refused to answer particular questions. Each of the three witnesses concerned was held in civil contempt and incarcerated for the remainder of the trial, whereupon they were found to be in criminal contempt and sentenced to three years apiece. The Ninth Circuit adhered to the rule it laid down in *Yates* and reversed the criminal contempt convictions.

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[3] *continued*
it is more accurate to say that appellant clarified his "warning" argument when he suggested that the warning be given at an efficacious time. Accordingly we deem the point to have been raised sufficiently.

[4] The court did not discuss the timing of the notification it required. Of course, as there was no question of immunity (Ms. Yates having waived her Fifth Amendment rights by taking the stand) her conduct must have become contemptuous at the point at which she with certainty "refused" to answer despite being instructed to do so. On some initial refusal a warning would still have been effective if we assume that she could at that point have reconsidered and answered. This seems to us the only logical way to read *Yates*; that court would not have required a warning when it was too late. *But see Petito*, 671 F.2d at 72 (citing *Yates* as requiring "positive notification of a possible criminal contempt charge at the time civil contempt sanctions are imposed").

As the *Petito* court observed, 671 F.2d at 72 n.4, *Daschbach* does much to amplify the *Yates* court's concern about confusion and the explicit nature of the notice needed to cure it. The *Daschbach* court reviewed the remarks made by the trial court at the time it held the various witnesses in civil contempt. The trial court at several points drew a distinction between coercive and punitive sanctions and emphasized that coercive measures were the court's only concern at that time. Nevertheless the appellate panel held that the witnesses had not received "positive notification" of the possibility of definite criminal penalties as required by *Yates*,[5] and therefore that their criminal contempt convictions violated their due process rights. In referring to the remarks made to one of the defendants, the court observed that:

> [t]he import of these remarks seems to be that the restraint imposed during trial was intended to be coercive and not penal, and that the court had not yet considered whether an additional penal sentence could and should be imposed. They do not constitute a forthright "positive notification" to the defendant that he was subject to an additional punitive sanction if the court chose to invoke it.

254 F.2d at 692. This followed the court's notation that, at one point in the civil contempt proceedings, the trial court had stated that "[t]he question of punishment for violating any order of the Court has not been considered." *Id.*

B.

The *Yates* and *Dashbach* cases prescribe a rule that a witness held in civil contempt for refusing to testify must be unequivocally advised by the court that the civil sanc-

[5] The *Daschbach* court observed that this "positive notification" would have been required "at or about the time coercive restraint was applied." 254 F.2d at 692.

tion he will receive does not preclude later criminal sanctions based on the same conduct. While we are sympathetic to the concerns that prompted the announcement of this rule in *Yates*, we do not believe that the Due Process clause requires such a warning. Accordingly we respectfully decline to follow those cases.

As a matter of policy we have little quarrel with the notion that "positive notification" of the possibility of subsequent criminal sanctions will lessen confusion. It would be commendable to include such notice in immunization procedures because it would advance the interests of all parties concerned. A witness' interests would be served by assuring that he was fully aware of all of the consequences of his actions. The interests of the government in coercing the witness to testify and of the court in coercing the witness to obey its order would be advanced because the weight of the coercion would increase as the witness became aware of further undesirable consequences.

That a practice is advisable, though, does not mean it is required by law. It might well lessen confusion to post criminal penalties in prominent places in which particular laws could be violated, and this is occasionally, though rarely, done. An example may be found as near to hand as the "franked" envelopes used by this court and other government agencies, which advise the user of a specific penalty if they are used for private purposes. There is, of course, no general requirement that all penalties be posted in places and manners that would do the most good.

Where courts or court rules have required affirmative warnings to defendants of the consequences of their actions, it has not been simply because some of those consequences are not readily apparent. Most often affirmative warnings are required when rights are about to be waived, such as Fifth Amendment rights to avoid self-incrimination and to have counsel present during custodial interrogation, *see Miranda v. Arizona*, 384 U.S. 436 (1966), or the right to a trial by jury at which one may have

assistance of counsel and may cross-examine witnesses, *see* Rule 11(c)(3) and (4), Fed.R.Crim.P. (prescribing specific notification before pleas of guilty or *nolo contendere* may be accepted).[6] Monteleone had no rights to waive; having been immunized, he had no more right to disobey Judge Evans' order than a bank robber has to rob a bank, and therefore no greater right to be told in advance of the possible consequences of his act.

Monteleone asserts that he was more likely to be misled because of the potential for two terms of incarceration imposed by the same authority for the same conduct, admittedly not a common situation outside the area of contempt, and suggests that this confusion was aggravated by Judge Evans' reference to "punish[ing] him accordingly" in his discussion of civil (*i.e.* coercive) contempt. While we agree that such confusion is more likely in this situation, it does not follow that the court (or any other officer) is obligated to take affirmative steps to avoid it. Whether Monteleone was confused about the *consequences* of his actions is not relevant to his guilt, or (more specifically) to the state of mind necessary to convict.

The maxim that "ignorance of the law is no excuse" is one that we have termed "time worn." *Wilson v. Health and Hospital Corporation of Marion County,* 620 F.2d 1201, 1211 (7th Cir. 1980). It is not an absolute rule; "ignorance" may be a defense when it negates a mental state that is an element of the charged offense. *United States v. Petito,* 519 F.Supp. 838, 841 (E.D.N.Y. 1981), *aff'd* 671 F.2d 68 (2d Cir. 1982), *citing* W. LaFave and A. Scott, *Criminal Law* § 47 (1972). In order to convict Monteleone of criminal contempt under 18 U.S.C. §§ 401 and 402, the government had to prove that he "willfully" disobeyed Judge Evans' order. *See United States v. Ray,* 683 F.2d

[6] Rule 11(c)(1) requires that the court advise a defendant of the penalties he faces. At that point, though, he has already been charged and can no longer "back out" of the criminal act. The notice required by this provision is directed to a defendant's decision on how to plead, not on whether to act in the first place.

1116, 1127 (7th Cir.), *cert. denied*, 459 U.S. 1091 (1982); *United States v. Patrick*, 542 F.2d 381, 389 (7th Cir. 1976), *cert. denied*, 430 U.S. 931 (1977) (discussing requirement that intent be shown, *i.e.* that the act be "knowingly" and "willfully" done). The showing of knowledge required only refers to Monteleone's awareness of Judge Evans' order and his understanding of its contents. Monteleone was convicted of willfully disobeying that order; all that he had to understand in order to decide whether to violate the law was what the order said. The government did not have to prove that Monteleone knew he was violating a particular provision of law. *United States v. Berardelli*, 565 F.2d 24, 30 (2d Cir. 1977). It follows that he did not have to be aware, or to be made aware, of specific consequences of that violation.[7]

III.

Monteleone has raised several additional issues for our consideration.[8] He first argues that he was deprived of

[7] At pages 4-5 *supra* we pointed out that *Petito* discussed the requirement of a warning at the time civil sanctions are imposed. Nevertheless we regard our holding herein as compatible with the Second Circuit's conclusion that no positive notification is required, a conclusion based in part on *Berardelli*. *See Petito*, 671 F.2d at 73 n.6, and accompanying text. Our holding is also in harmony with *United States v. Seale*, 461 F.2d 345 (7th Cir. 1972). In that case the defendant was bound and gagged in court in response to disruptive behavior committed during his criminal trial. Without extensive discussion we held that he "need not specifically have been warned nor indeed be aware that his conduct could be visited with a criminal penalty as opposed to another type of sanction." 461 F.2d at 366, *citing United States ex rel. Shell Oil Co. v. Barco Corp.*, 430 F.2d 998, 1001 (8th Cir. 1970).

[8] Conceding that Supreme Court precedent is against him, *see Yates v. United States*, 355 U.S. 66 (1957) and *United States v. United Mine Workers*, 330 U.S. 258 (1946), Monteleone asserts that his criminal conviction based on the same conduct for which he was incarcerated civilly violates the Fifth Amendment's Double Jeopardy clause. With due appreciation for counsel's candid admission that the point was raised simply to preserve it for further review, we adhere to those cases and reject that claim.

a fair trial by the failure of the district court to delete all references to his invocation of his Fifth Amendment privilege from the transcripts of his court hearings and grand jury appearances that were admitted as exhibits at trial. The record reflects that *most* of those references were either deleted entirely or replaced with the words "refused to testify", but some remained.

Monteleone's blanket assertion that a jury should never be told of a defendant's invocation of the Fifth Amendment and his reliance on *Miranda*, 384 U.S. 436, *Griffin v. California*, 380 U.S. 609 (1965), *Gruenwald v. United States*, 353 U.S. 391 (1957), and their progeny are misplaced. Those cases concerned the use in a criminal trial of the fact that a defendant had invoked his Fifth Amendment rights in declining at some earlier time to give information *relevant to his guilt or innocence of the offense for which he was on trial.* Monteleone "took the Fifth" when asked what had prompted him to refuse to testify in *1979*, but he was tried and convicted of criminal contempt for refusing to testify in *1983*. The few Fifth Amendment invocations admitted at trial thus concerned matters other than his guilt or innocence of the offense for which he was on trial; they could not be interpreted as implicitly incriminating in that proceeding.

Absent any direct Fifth Amendment concern the references were admissible unless their probative value was "substantially outweighed" by prejudicial or confusing effect. Rule 403, Fed.R.Evid. The balancing of these factors is committed to the broad and sound discretion of the trial court, and will not be overturned by this court unless that discretion is abused. *United States v. Peters*, 791 F.2d 1270, 1308 (7th Cir. 1986). It is apparent on this record that substantial discretion was exercised, as the trial judge went over the exhibits extensively with counsel in an effort to avoid repeated, and possibly confusing, references to the Fifth Amendment. He may also have wished to avoid such fractional prejudice as might result from *any* reference to the Fifth Amendment. A few references remained where editing would have made some

passages unclear, but the judge specifically instructed the jury that no adverse inferences should be drawn from them. Under these circumstances we find no abuse of discretion.

Monteleone also contends that the trial judge erred in refusing to instruct the jury on a defense of reliance in good faith on the advice of counsel that he had complied with Judge Evans' order by reading the brief statement he had prepared. He asserts that this belief was supported by his knowledge of the scope of the grand jury's investigation, which he thought had been covered by the statement. Although Judge Evans specifically ordered him to "give testimony,"[9] Monteleone argues that "[f]rom [his] point of view, the judge could have been wrong and [his] lawyer could have been correct." *Appellant's Br.* at p. 32.

We dealt with an argument similar to Monteleone's in *United States v. Ray*, 683 F.2d 1116 (7th Cir.), *cert. denied*, 459 U.S. 1091 (1982). Ray refused to obey a district court order that he provide specific handwriting exemplars to the F.B.I. and was convicted of criminal contempt. Ray claimed to believe that he had complied with that order by giving samples of his writing to state authorities in an earlier investigation, but the trial court excluded evidence of his belief. In upholding that ruling we observed that Ray's own evaluation of his conduct in light of the court order could not excuse him from contempt liability because the meaning of the order was clear and its correctness was not an issue for him to pass upon:

> A good faith effort to comply with a court order tends to negate willfullness, an element of criminal contempt which must be proven beyond a reasonable doubt . . .

[9] At the October 5 hearing, Judge Evans ordered that Monteleone "appear before the Grand Jury, [and] give testimony under the previously-issued immunity grant . . . at the direction of the Prosecutors." The written order entered on that date (Government Exhibit 18) directed him to "answer the questions which he is asked and produce what evidence is required of him . . ."

> Yet the appellant misconstrues the defense of good faith compliance as allowing the defendant in a contempt proceeding to "second guess" the necessity for the order he is charged with violating. In most instances, a defense of good faith compliance arises when a defendant has not refused to comply with the court order he is charged with violating, but has failed to comply because of the indefiniteness of the order or some other inability to do so . . . The appellant does not contend that there was any confusion in his mind, nor could there have been, between the state court order compelling handwriting samples to the state authorities and the district court order compelling handwriting samples to the F.B.I. . . The court's order was valid, and the wisdom or necessity for the order could not constitute a defense to contempt for a refusal to comply with the order.

683 F.2d at 1126-1127.

It makes no difference that Ray relied on a defense based on his own interpretation of the order, while Monteleone's defense depends on alleged reliance on advice of counsel.[10] Judge Evans' order was unambiguous and uncomplicated; Monteleone could not reasonably have believed that reading his statement complied with that order, no matter what his lawyer told him. While cooperation with counsel should be encouraged, an attorney may not exculpate his client of contempt by advising him to disobey an order of the court because the judge is "wrong".

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[10] It has been suggested that good faith reliance on advice of counsel that one was in compliance with a court order could be a defense to criminal contempt. *See, e.g., United States v. Snyder*, 428 F.2d 520, 522-523 (9th Cir.), *cert. denied*, 400 U.S. 903 (1970). We have found no case, nor has counsel cited any, in which denial of such an instruction has been held erroneous.

IV.

Monteleone finally argues that the four-year sentence he received was excessive. While as a general matter this court will not review the size of a sentence absent unusual circumstances, Monteleone correctly points out that we bear a "special responsibility" in reviewing criminal contempt sentences due to the absence of any maximum penalty in either 18 U.S.C. § 401 or Rule 42, Fed.R.Crim.P. *See Green v. United States*, 356 U.S. 165, 188 (1958); *Ray*, 683 F.2d at 1122-1123; *Patrick*, 542 F.2d at 392. Nevertheless, this responsibility does not amount to plenary review. Sentencing by district courts under the criminal contempt statutes is still a matter of discretion. *Green*, 356 U.S. at 188-189. Accordingly we must place great reliance on the district court's decision. *Patrick*, 542 F.2d at 392.

Addressing the record before the district court at sentencing, Monteleone directs our attention to a number of positive factors, mostly concerning his involvement with his family, business and community. The government's sentencing presentation centered around Monteleone's involvement with and activities in support of organized crime, and included lengthy testimony at an evidentiary hearing by an immunized informant under federal witness protection. Monteleone has not argued that any of this evidence was improperly admitted or considered. In passing sentence the district judge took note of the points in Monteleone's favor, but also commented extensively on the important institutional role of the grand jury in the criminal process and of Monteleone's part in disrupting that process, as well as his association with "people of very unsavory standing in our society." He further expressed a specific desire to deter future disobedience in similar situations. We do not find that the judge exceeded his discretion in imposing a four-year sentence.

We reject Monteleone's suggestion that his sentence, the same as was imposed in the *Patrick* case, should be reduced because his offense was "less serious" than Patrick's. Comparing sentences imposed for different criminal acts by

different judges is a poor method for determining whether discretion has been properly exercised, as it suggests that greater discretion is lodged with the first judge than with the second. It is more apt to note that Monteleone's sentence (like Patrick's, *see* 542 F.2d at 393 n.14) was within the five year statutory limit for those convicted of obstructing a criminal investigation under 18 U.S.C. § 1510, a crime analytically similar to Monteleone's conduct. Legislative sentence limitations are more properly, though again not conclusively, considered in determining the limits of sentencing discretion in contempt cases because they are intended as principles of general application.

Monteleone misconstrues our *dictum* in *Patrick*, 542 F.2d at 393, that "[we] believe the punishment in a case such as [Patrick's] should be greater than in cases where a witness has merely refused to testify before a grand jury." That statement cannot be read as a general limitation on contempt sentences, which like all sentences are individually considered decisions. Monteleone was sentenced on a record that included more than just his contemptuous conduct. We bear in mind Justice Harlan's admonition in *Green*, 356 U.S. at 188, that "[t]he answer to those who see in the contempt power a potential instrument of oppression lies in assurance of its careful use and supervision, not in imposition of artificial limitations on the power."

V.

Finding no error in John Monteleone's conviction or sentence, we AFFIRM the judgment of the district court.

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FD-36 (Rev. 8-26-82)

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Date 7/6/87

TO: ACTING DIRECTOR, FBI (183-6252)
(ATTN: ORGANIZED CRIME SECTION)

FROM: SAC, MILWAUKEE (183B-80) (C)

FRANK BALISTRIERI;
PETER F. BALISTRIERI;
STEVE J. DI SALVO;
AUGUST S. MANIACI-VICTIM;
VINCENT J. MANIACI-VICTIM;
RICO-MURDER; OOJ (B)
OO: MI

This matter was originally opened on 7/12/77 following the death of Milwaukee LCN figure AUGUST S. MANIACI. On 8/17/77, a dynamite bomb consisting of 20 sticks of red arrow dupont, along with one pound TNT booster were discovered in the firewall of the vehicle of VINCENT J. MANIACI. Investigation followed to identify the individuals responsible for the attempted bombing. Prior to the bombing, FBI surveillance detected a surveillance on MANIACI by Milwaukee and Chicago LCN figures. The two Chicago area persons, [redacted] Both individuals subsequently served prison time for refusing to follow a court order that they [redacted] Milwaukee pursued this matter in order to charge [redacted] with criminal contempt. On 4/18/85, [redacted] appeared in U.S. District Court, EDW, and entered a not guilty plea to violation Title 18, U.S. Code, Section 401.

On 8/7/85, [redacted] was convicted of criminal contempt and subsequently sentenced to four years custody of the Attorney General. [redacted] thereafter appealed his conviction and was allowed to remain out of jail on bond during the appeal.

3 - Bureau (183-6252)
1 - Milwaukee (183B-80)
PAS/dg
(4)

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SEARCHED ___ INDEXED ___
SERIALIZED ___ FILED ___

183-86-410

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

On 11/3/86, U.S. Court of Appeals for the 7th Circuit affirmed [redacted] conviction. b3

On 6/22/87, the Chicago Strike Force advised that [redacted] began serving his federal sentence on 5/6/87.

No further information has been developed regarding the murder of AUGUST MANIACI and the attempted murder of VINCE MANIACI. Milwaukee is therefore closing this investigation at this time.

Memorandum

To : SAC, MILWAUKEE (183-80) Date 8/12/87

From : SA [redacted]

b6
b7C

Subject : SEMI-ANNUAL INVENTORY
OF PROPERTY

RETAIN X

1B (s) 2, 3, 4 + 5

REASON EISUR

DESTROY _____

1B (s) _____

REASON _____

RETURN _____

1B (s) _____

REASON _____

183-80-411

Memorandum

To : SAC, MILWAUKEE (183-80) Date 3-11-88

From : SA [redacted]

b6
b7C

Subject : SEMI-ANNUAL INVENTORY
OF PROPERTY

RETAIN X

1B (s) All

REASON Closed

DESTROY _____

1B (s) _____

REASON _____

RETURN _____

1B (s) _____

REASON _____

183-80-412

[redacted]

Closed 4-18

Memorandum

"C/SUR"

To : SAC, MILWAUKEE (183-80) Date 9/20/88

From : SA [redacted]

b6
b7C

Subject : SEMI-ANNUAL INVENTORY
OF PROPERTY

RETAIN X

1B (s) all

REASON Must retain for 15 yrs.

DESTROY _____

1B (s) _____

REASON _____

RETURN _____

1B (s) _____

REASON _____

183-80-413
K K

Elsur 418

To : SAC, MILWAUKEE (183-80)

Date 10/6/89

From : SA [redacted]

b6
b7C

Subject : SEMI-ANNUAL INVENTORY OF PROPERTY

RETAIN X

1B (s) All

REASON ElSur

DESTROY _____

1B (s) _____

REASON _____

RETURN _____

1B (s) _____

REASON _____

183-80-414

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OCT 31 1989

FBI — MILWAUKEE

To : SAC, MILWAUKEE (163-80) Date 3/7/90

From : SA [redacted]

b6
b7C

Subject : SEMI-ANNUAL INVENTORY
OF PROPERTY

RETAIN X

1B (s) All

REASON Closed

DESTROY _____

1B (s) _____

REASON _____

RETURN _____

1B (s) _____

REASON _____

163-80-415

[redacted]

Closed

Stamped 7/9/90 MWL

To : SAC, MILWAUKEE (183-80) Date 3/27/89

From : SA [redacted]

b6
b7C

Subject : SEMI-ANNUAL INVENTORY
OF PROPERTY

RETAIN X

1B (s) 1111

REASON ELSUR

DESTROY _____

1B (s) _____

REASON _____

RETURN _____

1B (s) _____

REASON _____

183-80-416

SEARCHED _____ INDEXED _____
SERIALIZED _____ FILED _____

MAR 7 1989

FBI - MILWAUKEE

FEDERAL BUREAU OF INVESTIGATION
FOIPA
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sealed
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